

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF EDEN PRAIRIE

In the Matter of the Liquor License of
Tuan Anh Truong, d/b/a Great Mandarin
Restaurant

**FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION AND
MEMORANDUM**

This matter was presented to the Administrative Law Judge on stipulated facts, and no evidentiary hearing was held.

Appearing on behalf of the City of Eden Prairie was Jennifer M. Inz, of the firm of Lang, Pauly, Gregerson & Rosow, 1600 Park Building, 650 Third Avenue South, Minneapolis, Minnesota 55402-4337. Appearing on behalf of Tuan Anh Truong was Dennis B. Johnson, of the firm of Chestnut & Cambronne, 204 Northstar Bank Building, 4661 Highway 61, White Bear Lake, Minnesota 55110.

The record closed upon receipt of the final argument on April 9, 2001.

NOTICE

This Report is a recommendation, **not** a final decision. The City Council will make the final decision after a review of the record. The City Council may adopt, reject or modify the Findings of Fact, Conclusions, Recommendations and Memorandum. Under Minn. Stat. § 14.61, the final decision of the City Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the City Council.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the license of Tuan Anh Truong for violations of the City Code relating to after-hours consumption and after-hours display of alcoholic beverages when the restaurant was closed to the public and being used by the owner for a private party?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Tuan Anh Truong is the sole shareholder of TA, Inc., a Minnesota Corporation, which owns a Chinese restaurant located in the Eden Prairie Shopping Center, operating under the name "The Great Mandarin".

2. January 20, 2001, was the Chinese New Year.

3. As a result of being relocated by the Eden Prairie Mall, the Great Madarin's last day of business, in their current location, was January 20, 2001.

4. On January 20, 2001, the Great Mandarin restaurant was open for business until 8:00 p.m. at which point the restaurant was closed for remodeling and relocation.

5. At approximately 8:30 p.m., the Great Mandarin had a private party, by invite only, to celebrate the closing and relocation of the restaurant, which coincided with the biggest celebration of the Chinese culture, the Chinese New Year.

6. All drinks and food were provided to the guests of the private party free of charge.

7. No drinks were provided to the guests after 1:00 a.m., however, approximately twenty (20) guests stayed and drank the drinks received prior to 1:00 a.m. until approximately 2:00 a.m.

8. Tuan Anh Truong admits that there was alcohol on the tables and being consumed by the invited guests until at least 2:00 a.m. on January 21, 2001, and that the guests consumed alcohol between 1:20 a.m. and 2:00 a.m.

9. Tuan Anh Truong was present at all times and was seated at a table next to the bar when the police arrived.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the City of Eden Prairie and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 340A.415 and 14.50 (2000).

2. That all procedural and substantive requirements of law and rule have been satisfied so as to allow the Administrative Law Judge and the City to proceed at this time.

3. That the City Code Section 4.07, subd. 1(F) makes it unlawful for any Licensee to permit consumption of beer, wine or liquor on licensed premises more than twenty (20) minutes after the hour when a sale thereof can legally be made. Subd. 1(G) of that same Section provides that it is unlawful for any

off-sale Licensee to permit any glass, bottle or other container, containing beer, wine or liquor in any quantity, to remain upon any table, bar stool or other place where customers are served, more than twenty (20) minutes after the hour when the sale thereof can legally be made.

4. That Tuan Anh Truong was in violation of Section 4.07, subd. 1(F) on the morning of January 21, 2001, because he permitted the consumption of beer, wine or liquor on the premises more than twenty (20) minutes after 1:00 a.m.

5. That Tuan Anh Truong was in violation of Section 4.07, subd. 1(G) on the morning of January 21, 2001, because he allowed glasses, bottles and other containers containing beer, wine or liquor to remain upon tables and other places where customers are served more than twenty (20) minutes after 1:00 a.m.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the City Council take disciplinary action against the License of Tuan Anh Truong for the violations noted above, but that the Council consider the unusual circumstances set forth in the Findings when selecting a penalty.

Dated this 3rd day of May, 2001.

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

Licensee claims that there were no violations because the after-hours activity occurred at a private invite-only party where no person paid for any of the drinks. Licensee argues that the activities did not take place at a "licensed premises" but rather at a private party for personal friends. Licensee claims that it was not acting as a licensed establishment, and thus was not subject to Minnesota laws because there were no "sales".

The City on the other hand, argues that there is no exception in the Code for a Licensee giving away drinks instead of selling them and that if such an “exception” were read into the code, enforcement would become absurd.

The Administrative Law Judge believes that the letter of the code prohibits Licensee from doing what he did, and that it is more appropriate for the City to define whatever “exemptions” it might want to add to the Code as a result of this incident by amending the Code. Nevertheless, he believes that the City Council might want to take into account the circumstances surrounding these violations when deciding on the penalty it wishes to impose.

A.W.K.